

Message Text

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FM AMEMBASSY STOCKHOLM
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INFO USMISSION GENEVA
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E.O. 11652: N/A
TAGS: SHUM, UN, SW
SUBJECT: TEXT OF SWEDISH DRAFT CONVENTION AGAINST TORTURE

REF: (A) USUN 0081, (B) GENEVA 0788

1. AT EMBASSY REQUEST, MFA LEGAL ADVISOR HANS DANIELIUS HAS PROVIDED COPY OF SWEDISH DRAFT CONVENTION AGAINST TORTURE (REPEATED PARA 3 BELOW). DANIELIUS INFORMED POLCOUNS THAT DRAFTING WAS COMPLETED IN STOCKHOLM JANUARY 19 AFTER INCORPORATION OF SEVERAL SUGGESTIONS FROM HUMAN RIGHTS DIVISION IN GENEVA. DANIELIUS SAID GOS IS REQUESTING UN SECRETARIAT TO PUBLISH DRAFT AS UN DOCUMENT AND MAKE IT AVAILABLE TO DELEGATES ON OPENING DAY, FEBRUARY 6, OF HUMAN RIGHTS CONVENTION IN GENEVA. GOS, HE SAID, COULD MAKE AVAILABLE DRAFT BEGINNING JANUARY 23 TO CERTAIN DELEGATIONS FOR COMMENT.

2. DANIELIUS, WHO WILL LEAD SWEDISH DELEGATION, SAID GOS APPRECIATED VARIOUS SUGGESTIONS FOR CONSULTATIONS IN EITHER NEW YORK OR GENEVA BEFORE HRC OPENING
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(REF A), BUT FEELS THAT THERE WILL BE ABUNDANT OPPORTUNITY FOR DISCUSSION OF THE DRAFT DURING THE "SLOW PERIOD" WHICH CHARACTERIZES THE FIRST WEEK OR SO OF HRC MEETINGS. DANIELIUS SAID HE HAS ABSOLUTELY NO OBJECTION TO ONE OR MORE MEMBERS US DELEGATION "PASSING BY" STOCKHOLM DURING WEEK BEFORE HRC OPENING, IN FACT WOULD WELCOME IT, BUT GOS HAS NO INTENTION OF INITIATING MEETING HERE

COMPOSED OF SEVERAL DELEGATIONS. DANELIUS SAID GOS
IS PREPARED TO BE "VERY FLEXIBLE" WITH REGARD TO
CONSTRUCTIVE SUGGESTIONS FROM OTHER DELEGATIONS.

3. BEGAIN UNCLASSIFIED. TEXT SWEDISH DRAFT FOLLOWS.

"DRAFT INTERNATIONAL CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT.
(PREAMBLE TO BE ELABORATED)

"ARTICLE I

"1. FOR THE PURPOSE OF THE PRESENT CONVENTION,
TORTURE MEANS ANY ACT BY WHICH SEVERE PAIN OR SUFFERING,
WHETHER PHYSICAL OR MENTAL, IS INTENTIONALLY INFLICTED
BY OR AT THE INSTIGATION OF A PUBLIC OFFICIAL ON A PERSON
FOR SUCH PURPOSES AS OBTAINING FROM HIM A THIRD PERSON
INFORMATION OR CONFESSION, PUNISHING HIM FOR AN ACT HE HAS
COMMITTED OR IS SUSPECTED OF HAVING COMMITTED, OR INTIMIDATING
HIM OR OTHER PERSONS. IT DOES NOT INCLUDE PAIN OR SUFFERING
ARISING ONLY FROM, INHERENT IN OR INCIDENTAL TO, LAWFUL
SANCTIONS TO THE EXTENT CONSISTENT WITH THE STANDARD
MINIMUM RULES FOR THE TREATMENT OF PRISONERS.

"2. TORTURE CONSTITUTES AN AGGRAVATED AND DELIBERATE FORM
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OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

"ARTICLE 2

"1. EACH STATE PARTY UNDERTAKES TO ENSURE THAT TORTURE OR
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT DOES NOT TAKE PLACE WITHIN IT JURISDICTION.
UNDER NO CIRCUMSTANCES SHALL ANY STATE PARTY PERMIT OR
TOLERATE TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT.

"2. NO EXCEPTIONAL CIRCUMSTANCES WHATSOEVER, WHETHER
A STATE OF WAR OR A THREAT OF WAR, INTERNAL POLITICAL
INSTABILITY OR ANY OTHER PUBLIC EMERGENCY, MAY BE INVOKED
AS A JUSTIFICATION OF TORTURE OR OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT.

"3. AN ORDER FROM A SUPERIOR OFFICER OR A PUBLIC
AUTHORITY MAY NOT BE INVOKED AS A JUSTIFICATION OF
TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT.

"ARTICLE E.

"EACH STATE PARTY SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THE PRESENT CONVENTION, TAKE LEGISLATIVE, ADMINISTRATIVE, JUDICIAL AND OTHER MEASURES TO PREVENT TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT FROM BEING PRACTICED WITHIN ITS JURISDICTION.

"ARTICLE 4

"NO STATE PARTY MAY EXPEL OR EXTRADITE A PERSON TO A STATE WHERE THERE ARE REASONABLE GROUNDS TO BELIEVE THAT HE MAY BE IN DANGER OF BEING SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.
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"ARTICLE 5

"1. EACH STATE PARTY SHALL ENSURE THAT EDUCATION AND INFORMATION REGARDING THE PROHIBITION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ARE FULLY INCLUDED IN THE CURRICULA OF THE TRAINING OF LAW

ENFORCEMENT PERSONNEL AND OF OTHER PUBLIC OFFICIALS AS WELL AS MEDICAL PERSONNEL WHO MAY BE RESPONSIBLE FOR PERSONS DEPRIVED OF THEIR LIBERTY.

"2. EACH STATE PARTY SHALL INCLUDE THIS PROHIBITION IN THE GENERAL RULES OR INSTRUCTIONS ISSUED IN REGARD TO THE DUTIES AND FUNCTIONS OF ANYONE WHO MAY BE INVOLVED IN THE CUSTODY OR TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY.

"ARTICLE 6

"EACH STATE PARTY SHALL KEEP UNDER SYSTEMATIC REVIEW INTERROGATION METHODS AND PRACTICES AS WELL AS ARRANGEMENTS FOR THE CUSTODY AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY IN ITS TERRITORY, WITH A VIEW TO PREVENTING ANY CASES OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING LIMITED OFFICIAL USE

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TREATMENT OR PUNISHMENT.

"ARTICLE 7

"1. EACH STATE PARTY SHALL ENSURE THAT ALL ACTS OF TORTURE AS DEFINED IN ARTICLE 1 ARE OFFENSES UNDER ITS CRIMINAL LAW. THE SAME SHALL APPLY IN REGARD TO ACTS WHICH CONSTITUTE PARTICIPATION IN, COMPLICITY, IN, INCITEMENT TO OR AN ATTEMPT TO COMMIT TORTURE.

"2. EACH STATE PARTY UNDERTAKES TO MAKE THE OFFENSES REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE PUNISHABLE BY SEVERE PENALTIES."

"ARTICLE 8

"1. EACH STATE PARTY SHALL TAKE SUCH MEASURES AS MAY BE NECESSARY TO ESTABLISH ITS JURISDICTION OVER THE OFFENSES REFERRED TO IN ARTICLE 7 IN THE FOLLOWING CASES:

"(A) WHEN THE OFFENSES ARE COMMITTED IN THE TERRITORY OF THAT STATE OR ON BOARD A SHIP OR AIRCRAFT REGISTERED IN THAT STATE;

"(B) WHEN THE ALLEGED OFFENDER IS A NATIONAL OF THAT STATE;

"(C) WHEN THE VICTIM IS A NATIONAL OF THAT STATE.

"2. EACH STATE PARTY SHALL LIKEWISE TAKE SUCH MEASURES AS MAY BE NECESSARY TO ESTABLISH ITS JURISDICTION OVER THESE OFFENSES IN CASES WHERE THE ALLEGED OFFENDER IS PRESENT IN ITS TERRITORY AND IT DOES NOT EXTRADITE HIM PURSUANT TO ARTICLE 14 TO ANY OF THE STATES MENTIONED IN PARAGRAPH 1 OF THIS ARTICLE.

"3. THIS CONVENTION DOES NOT EXCLUDE ANY CRIMINAL JURISDICTION EXERCISED IN ACCORDANCE WITH INTERNAL LAW.

"ARTICLE 9

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"EACH STATE PARTY SHALL GUARANTEE TO ANY INDIVIDUAL WHO ALLEGES TO HAVE BEEN SUBJECTED WITHIN ITS JURISDICTION TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT BY OR AT THE INSTIGATION OF ITS PUBLIC OFFICIALS, THE RIGHT TO COMPLAIN TO AND TO HAVE HIS CASE IMPARTIALLY EXAMINED BY ITS COMPETENT AUTHORITIES WITHOUT THREAT OF FURTHER TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

"ARTICLE 10

"EACH STATE PARTY SHALL ENSURE THAT, EVEN IF THERE HAS BEEN NO FORMAL COMPLAINT, ITS COMPETENT AUTHORITIES PROCEED TO AN IMPARTIAL, SPEEDY AND EFFECTIVE INVESTIGATION, WHEREVER THERE IS REASONABLE GROUND TO BELIEVE THAT AN ACT OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT HAS BEEN COMMITTED WITHIN ITS JURISDICTION.

"ARTICLE 11

"1. EACH STATE PARTY SHALL, EXCEPT IN THE CASES REFERRED TO IN ARTICLE 14, ENSURE THAT CRIMINAL PROCEEDINGS ARE INSTITUTED IN ACCORDANCE WITH ITS NATIONAL LAW AGAINST AN ALLEGED OFFENDER WHO IS PRESENT IN ITS TERRITORY, IF ITS COMPETENT AUTHORITIES ESTABLISH THAT AN ACT OF TORTURE AS DEFINED IN ARTICLE 1 APPEARS TO HAVE BEEN COMMITTED AND IF THAT STATE PARTY HAS JURISDICTION OVER THE OFFENSE IN ACCORDANCE WITH ARTICLE 8.

"2. EACH STATE PARTY SHALL ENSURE THAT AN ALLEGED OFFENDER IS SUBJECT TO CRIMINAL, DISCIPLINARY OR OTHER APPROPRIATE PROCEEDINGS, WHEN AN ALLEGATION OF OTHER FORMS OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT WITHIN ITS JURISDICTION IS CONSIDERED TO BE WELL FOUNDED.

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"ARTICLE 12

"EACH STATE PARTY SHALL GUARANTEE AN ENFORCEABLE RIGHT TO
COMPENSATION TO THE VICTIM OF AN ACT OF TORTURE OR OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT COMMITTED
BY OR AT THE INSTIGATION OF ITS PUBLIC OFFICIALS. IN
THE EVENT OF THE DEATH OF THE VICTIM, HIS RELATIVES OR
OTHER SUCCESSORS SHALL BE ENTITLED TO ENFORCE THIS RIGHT
TO COMPENSATION.

"ARTICLE 13

"EACH STATE PARTY SHALL ENSURE THAT ANY STATEMENT WHICH
IS ESTABLISHED TO HAVE BEEN MADE AS A RESULT OF TORTURE
OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
SHALL NOT BE INVOKED AS EVIDENCE AGAINST THE PERSON
CONCERNED OR AGAINST ANY OTHER PERSON IN AHP PROCEEDINGS.

"ARTICLE 14

"INSTEAD OF INSTITUTING CRIMINAL PROCEEDINGS IN ACCORDANCE
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WITH PARAGRAPH 1 OF ARTICLE 11, A STATE PARTY MAY, IF
REQUESTED, EXTRADITE THE ALLEGED OFFENDER TO ANOTHER STATE
PARTY WHICH HAS JURISDICTION OVER THE OFFENSE IN ACCORDANCE
WITH ARTICLE 8.

"ARTICLE 15

"1. STATES PARTIES SHALL AFFORD ONE ANOTHER THE GREATEST
MEASURE OF ASSISTANCE IN CONNECTION WITH PROCEEDINGS
REFERRED TO IN ARTICLE 11, INCLUDING THE SUPPLY OF ALL
EVIDENCE AT THEIR DISPOSAL NECESSARY FOR THE PROCEEDINGS.
"2. THE PROVISIONS OF PARAGRAPH 1 OF THIS ARTICLE SHALL NOT
AFFECT OBLIGATIONS CONCERNING MUTUAL JUDICIAL ASSISTANCE

EMBODIED IN ANY OTHER TREATY.

"ARTICLE 16

"STATES PARTIES UNDERTAKE TO SUBMIT TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, WHEN SO REQUESTED BY THE HUMAN RIGHTS COMMITTEE ESTABLISHED IN ACCORDANCE WITH ARTICLE 28 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (HEREAFTER REFERRED TO IN THE PRESENT CONVENTION AS THE HUMAN RIGHTS COMMITTEE), REPORTS OR OTHER INFORMATION ON MEASURES TAKEN TO SUPPRESS AND PUNISH TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT. SUCH REPORTS OR INFORMATION SHALL BE CONSIDERED BY THE HUMAN RIGHTS COMMITTEE IN ACCORDANCE WITH THE PROCEDURES SET OUT IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE.

"ARTICLE 17

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"IF THE HUMAN RIGHTS COMMITTEE RECEIVES INFORMATION THAT TORTURE IS BEING SYSTEMATICALLY PRACTICED IN A CERTAIN STATE PARTY, THE COMMITTEE MAY DESIGNATE ONE OR MORE OF ITS MEMBERS TO CARRY OUT AN INQUIRY AND TO REPORT TO THE COMMITTEE URGENTLY. THE INQUIRY MAY INCLUDE A VISIT TO THE STATE CONCERNED, PROVIDED THAT THE GOVERNMENT OF THAT STATE GIVES ITS CONSENT.

"ARTICLE 18

"1. A STATE PARTY MAY AT ANY TIME DECLARE UNDER THIS ARTICLE THAT IT RECOGNIZES THE COMPETENCE OF THE HUMAN RIGHTS COMMITTEE TO RECEIVE AND CONSIDER COMMUNICATIONS TO THE EFFECT THAT A STATE PARTY CLAIMS THAT ANOTHER STATE PARTY IS NOT FULFILLING ITS OBLIGATIONS UNDER THE PRESENT CONVENTION. COMMUNICATIONS UNDER THIS ARTICLE MAY BE RECEIVED AND CONSIDERED ONLY IF SUBMITTED BY A STATE PARTY WHICH HAS MADE A DECLARATION RECOGNIZING IN REGARD TO ITSELF THE COMPETENCE OF THE HUMAN RIGHTS COMMITTEE. NO COMMUNICATION SHALL BE RECEIVED BY THE HUMAN RIGHTS COMMITTEE IF IT CONCERNS A STATE PARTY WHICH HAS NOT MADE SUCH A DECLARATION.

"2. COMMUNICATIONS RECEIVED UNDER THIS ARTICLE SHALL BE DEALT WITH IN ACCORDANCE WITH THE PROCEDURE PROVIDED FOR IN ARTICLE 41 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE.

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"ARTICLE 19

"IF A MATTER REFERRED TO THE HUMAN RIGHTS COMMITTEE IN
ACCORDANCE WITH ARTICLE 18 IS NOT RESOLVED TO THE
SATISFACTION OF THE STATES PARTIES CONCERNED, THE COMMITTEE
MAY, WITH THE PRIOR CONSENT OF THE STATES PARTIES CONCERNED,
APPOINT AN AD HOC CONCILIATION COMMISSION. THE PROCEDURES
GOVERNING THIS COMMISSION SHALL BE THE SAME AS THOSE PROVIDED
FOR IN ARTICLE 42 OF THE INTERNATIONAL COVENANT ON CIVIL
AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE
HUMAN RIGHTS COMMITTEE.

"ARTICLE 20

"1. A STATE PARTY MAY AT ANY TIME DECLARE UNDER THIS ARTICLE
THAT IT RECOGNIZES THE COMPETENCE OF THE COMMITTEE TO RECEIVE
AND CONSIDER COMMUNICATIONS FROM INDIVIDUALS SUBJECT
TO ITS JURISDICTION WHO CLAIM TO HAVE BEEN SUBJECTED TO
TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT IN CONTRAVENTION OF THE OBLIGATIONS OF THAT
STATE PARTY UNDER THE PRESENT CONVENTION. NO COMMUNICATION
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SHALL BE RECEIVED BY THE COMMITTEE IF IT CONCERNS A STATE PARTY WHICH HAS NOT MADE SUCH A DECLARATION.

"2. COMMUNICATIONS RECEIVED UNDER THIS ARTICLE SHALL BE DEALT WITH IN ACCORDANCE WITH THE PROCEDURE PROVIDED FOR IN THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE.

"ARTICLE 21

"THE HUMAN RIGHTS COMMITTEE SHALL INCLUDE IN ITS ANNUAL REPORT TO THE GENERAL ASSEMBLY A SUMMARY OF ITS ACTIVITIES UNDER ARTICLES 16, 17, 18, 19 AND 20 OF THE PRESENT CONVENTION. (FINAL CLAUSES TO BE ELABORATED)" END UNCLASSIFIED.
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